

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JAMES DELLINGER,)	
)	
<i>Petitioner,</i>)	
v.)	NO. 3:09-cv-104
)	VARLAN/SHIRLEY
)	Death Penalty
ROLAND COLSON, Warden,)	
)	
<i>Respondent.</i>)	

ORDER

This matter is before the Court on Petitioner's motions requesting to exceed the 25-page limitation on briefs (Doc. 62); expand the record (Doc. 64); and file a document under seal (Doc. 65), and Respondent's motion requesting an extension of time in which to file a reply to Petitioner's response to his summary judgment motion (Doc. 69). The motions will be addressed in the order in which they were filed.

I. Motion to Exceed Page Limitation

Petitioner requests permission to exceed the 25-page limitation on briefs to which Respondent's counsel does not oppose (Doc. 62). Petitioner has filed a two-hundred and forty-two (242) page brief (Doc. 63) in response to Respondent's 120 page response/motion for summary judgment (Doc. 34). Petitioner's decision to respond to Respondent's summary judgment motion in a different organizational format than Respondent's summary judgment motion will require the unnecessary expenditure of time and judicial resources, and could cause confusion in ruling on the various claims.

Therefore, Petitioner is hereby **ORDERED** to reorganize his brief to address each claim, by the same number and title, and in the same sequence and format, as it is raised in Respondent's

summary judgment motion. In addition, Petitioner's brief **SHALL** include a table of contents. The table of contents **SHALL** list each claim by the same number and title, and in the same sequence in which the claim is raised in Respondent's summary judgment motion and in Petitioner's reorganized brief. In addition, the table of contents **SHALL** identify the page numbers where the discussion of each claim is raised in Petitioner's responsive brief. Petitioner is **ORDERED** to file the reorganized brief and table of contents within **fifteen (15) days** from the date of this Order. Petitioner and Respondent **SHALL** hereafter, continue to comport their filings to the same format and sequence as addressed in the filing to which they are responding.

Accordingly, the Court **GRANTS** Petitioner's motion to exceed the 25-page limitation on briefs pending Petitioner's submission of his reorganized brief and table of contents **within fifteen (15) days** from the date of this Order (Doc. 62).¹

II. Motion to Expand the Record

Petitioner requests the Court to either order the Clerk of this Court to duplicate and supplement the record in this case with the entire state court record in the Sevier County case or direct Respondent to file a complete copy of the state court record in the Sevier County case with the Court Clerk in this case (Doc. 64). Respondent opposes the motion arguing that the claim which the record supports is procedurally defaulted. Petitioner maintains that even if the double jeopardy claim is procedurally defaulted, the merits of the double jeopardy claim must be considered because they establish Petitioner is actually innocent of the death penalty (Doc. 64).

¹ The Court requests Petitioner to give serious consideration to reducing the length of his response to the motion for summary judgment to no more than 200 pages, but in any event, the reorganized response **SHALL** not exceed 242 pages.

Accordingly, the Court **GRANTS** the motion and **ORDERS** Respondent to file a complete copy of the state court record in the Sevier County, Tennessee case and to serve Petitioner's counsel with a copy.¹

III. Motion to File Document *Ex Parte* and Under Seal

Also before the Court is Petitioner's motion to file a motion *ex parte* and under seal (Doc. 65) and the proposed sealed motion (Doc. 66). Petitioner requests to file the motion *ex parte* and under seal as it includes attorney-client relationship matters and matters governed by the Rules of Professional Conduct (Doc. 65). Accordingly, the motion to file *ex parte* and under seal is **GRANTED** at this time pending further order of the Court (Doc. 65).

It is hereby, **ORDERED** that the motion be filed **EX PARTE** and **UNDER SEAL** pending further order of the Court (Doc. 66). Local Rule 26.2. The motion to seal (Doc. 65) and this Order **SHALL** remain unsealed and in the public record.

IV. Respondent's Motion for Extension of Time to Reply to Petitioner's Summary Judgment Response

Finally, before the Court is Respondent's motion requesting an extension of time in which to file a reply to Petitioner's response to his summary judgment motion (Doc. 69). The motion is

¹ To the extent Petitioner seeks the Court to review the entire record of the Sevier County, Tennessee case, such review will generally be limited to those portions of the record specifically referenced by Petitioner or Respondent in support of his argument(s).

GRANTED to the extent that Petitioner **SHALL** file his reply within fifteen (15) days from the date on which Petitioner files his reorganized response (Doc. 69).

SO ORDERED.

E N T E R :

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge